

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 IN SEATTLE

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) No. CR11-228JLR
7)
8 vs.)
9)
10 ABU KHALID ABDUL-LATIF,)
11)
12 Defendant.)

13 SENTENCING

14 BEFORE THE HONORABLE JAMES L. ROBART
15 UNITED STATES DISTRICT COURT JUDGE

16 March 25, 2013

17 APPEARANCES:

18 Todd Greenberg
19 Michael Dion
20 Assistant United States Attorney
21 Representing the Plaintiff

22 Jennifer Wellman
23 Erik Levin
24 Public Defender's Office
25 Federal Representing the Defendant

1 THE CLERK: Case CR11-228, United States versus
2 Abdul-Latif. Counsel, please make your appearance.

3 MR. GREENBERG: Your Honor, Todd Greenberg and
4 Michael Dion for the United States.

5 MS. WELLMAN: Good morning, your Honor. Jennifer
6 Wellman and Erik Levin on behalf of Abu Latif, who is with
7 us at counsel table. Also present at counsel table is
8 Patricia Stordeur, a paralegal at our office.

9 THE COURT: Thank you. Counsel, let me give you
10 some preliminary comments so that you can sharpen your
11 presentations this morning. In preparation for today I've
12 gone back and read the plea agreement, which is unusual in
13 that it is a Criminal Rule 11(c)(1)(C) agreement, which at
14 the time that I accepted Mr. Abdul-Latif's plea of guilty
15 obligates me to rule within a certain range. If I don't
16 rule within that range, it is my understanding of
17 11(c)(1)(C) that either side has the ability to then void
18 that guilty plea.

19 Mr. Abdul-Latif has written me and suggested that he
20 has a different understanding of that rule, so someone
21 needs to address that particular question.

22 I have reviewed the government's memo and the material
23 that they have submitted. I have reviewed the defense
24 memo, the letters that came along with it, and have been
25 submitted along the way, the exhibits and the CD of

1 examinations that were conducted. And, finally, I have
2 reviewed the presentence report. The one that I have used
3 is revised as of March 18, 2013.

4 Ms. Wellman, have you and Mr. Abdul-Latif had an
5 opportunity to review that?

6 MS. WELLMAN: We have, your Honor.

7 THE COURT: There is not a disagreement in a
8 factual sense that this would be a base level 33. Because
9 of the nature of the victims, it would be a six-level
10 enhancement. Because of fitting the definition of
11 terrorism, it would be a 12-level enhancement. And
12 because of Mr. Abdul-Latif's letter to me, I am going to
13 give him acceptance of responsibility. I must say the
14 briefing in this case would argue strongly that there is
15 not acceptance, but the letter from Mr. Abdul-Latif is
16 what I'm going to go by.

17 That gives us then a total offense level of 48. The
18 criminal history category would be 3, except, once again,
19 for the definition of terrorism, which under the
20 guidelines it says that it needs to be a mandatory 6. So
21 that would be a total offense level of 48, criminal
22 history category of 6, which under the guideline range is
23 a life sentence.

24 Paragraph 9 of the plea agreement specifies that the
25 sentence is to be between 204 and 228 months. Not

1 surprisingly, the government comes in at 228 and the
2 defense comes in at 204.

3 There is also a disagreement on the period of
4 supervised release that should be imposed.

5 Finally, the judgment should read that the defense
6 requests placement at, and then there is a rather long
7 list of places that have things that would benefit
8 Mr. Abdul-Latif. And I would like those included.

9 The other thing that you all should know is, there are
10 three major defenses or arguments put forward by
11 Mr. Abdul-Latif. One has to do with saying that he was
12 entrapped, and, secondly, as part of that, that the court
13 should not believe anything that the confidential
14 informant says. A great deal of the briefing is dedicated
15 towards that.

16 I don't think that, having accepted the guilty plea in
17 this matter, goes to the question of conviction. I think
18 that is established. And so I have treated those
19 arguments as falling under the rubric of Factor One under
20 18 U.S. 3553(a), which is the nature and circumstances of
21 the offense.

22 The third argument has to do with various personal
23 considerations to Mr. Abdul-Latif, including his
24 upbringing and his medical history. That seems to me,
25 once again, since it doesn't go to the question of guilt

1 or innocence, I have treated those under the second factor
2 of 3553(a), which is the history and characteristics of
3 the defendant.

4 If someone disagrees with that as the proper approach
5 to this, then I would like to hear it as part of the
6 argument.

7 Counsel, are you ready to proceed?

8 MR. GREENBERG: Yes, your Honor. May it please
9 the court. Your Honor, standing before you today is a
10 defendant who agreed to and planned to kill United States
11 military officers and employees; a defendant who agreed to
12 kill high school age kids who were being recruited into
13 the military. He agreed to do this during an attack at
14 the MEPS Center, at the Federal Center South building here
15 in Seattle, an attack that would have had a devastating
16 effect and would have killed hundreds of people.

17 Now, the defense describes the defendant's attack plan
18 in a variety of ways. They use terms like phony,
19 manufactured, pure fantasy and bravado, and fantasy much
20 like paint ball or role playing.

21 Well, this wasn't a fantasy, and this defendant was
22 not playing a role, and the machine guns he purchased to
23 use during this attack weren't for paint ball. This was a
24 real attack plot, a real criminal conspiracy. And you
25 don't have to take my words for that, you have the

1 defendant's words for that, under oath, as this court has
2 I believe alluded to this morning. In the plea agreement,
3 in the plea colloquy before this court, this defendant
4 told you he agreed to this attack plan and agreed to kill
5 his intended victims.

6 If this was a fantasy, if this was role playing, it
7 wouldn't have been a crime, and he wouldn't have pled
8 guilty.

9 For this crime, your Honor, we recommend a lengthy
10 sentence of 19 years, and a term of supervised release for
11 life, which we submit is the fair and just sentence in
12 this case.

13 Now, we don't have to guess as to what the defendant's
14 motive was here. Again, we have his words telling us what
15 it was. He had a terrorism motive. This was a crime of
16 terrorism. And he had two real motivations that he
17 articulated himself; first, to send a message.

18 And the way he said that on one occasion of many was,
19 quote: "We are not only just trying to kill people. We
20 are trying to send a message. We are trying to do
21 something that is going to be on CNN and all over the
22 world. That's what we want, to say, look, the Muslims,
23 they are not going to allow this no more, for you to go to
24 their land and kill and slaughter their people." That was
25 the message he was sending.

1 And he also wanted to inspire other attacks similar to
2 his here in the United States. He said that on a number
3 of occasions. Including on one occasion: "Imagine how
4 many young Muslims after this, if we are successful at it,
5 will try to hit these kind of centers. Imagine how
6 fearful America will be. They will know they can't push
7 the Muslims around."

8 The defense portrays this as all the informant's idea,
9 that Abdul-Latif was pressured to participate in this
10 attack plot. But this is easily disproven by the
11 evidence. First, the YouTube evidence, the videos and the
12 comments. And we have given the court some of the
13 quotations from that evidence, and I won't go through that
14 again. But it is undisputed, for months and years before
15 this crime, the defendant was himself calling for violent
16 acts against the U.S. military and against its soldiers.

17 There was a clear trend in his commentary. It was
18 increasing as time went on, in terms of its extremism and
19 its violent tone. He had a preexisting motive long before
20 the informant came into this situation.

21 The recordings themselves, that we have provided the
22 transcripts for in our sentencing memo, also make very
23 clear whose idea this was. The defendant himself told the
24 informant on June 10th, "This has been in discussion off
25 and on for a while," between him and his co-defendant

1 Mr. Mujahidh. It is clear from the recordings that the
2 informant was the last one to join this plot.

3 In fact, the informant referred to -- on the
4 recordings, he said to Abdul-Latif, "When you first
5 brought this up," in one of their discussions. And
6 notably, Mr. Abdul-Latif doesn't correct him, doesn't
7 rebut it. In fact, nowhere on the countless hours of
8 recordings that we have in this investigation is there
9 ever a statement made by the defendant or anyone else that
10 it wasn't him who brought it up. This was his idea.

11 We see that very pointedly as well in an e-mail
12 exchange that the defendant had in early May of 2011.
13 This is over three weeks before there was any contact
14 between the defendant and the informant. And we
15 highlighted this in the sentencing memo, but I wanted to
16 quickly review it again.

17 On May 4th the defendant says, "Osama Bin Laden is a
18 pioneer of jihad." And he says, "I am one of the real
19 Muslims. I will give my life to Allah." He is saying,
20 "Let me know" -- he is writing this to another person,
21 "Let me know what I can do."

22 The other person responds and essentially tries to
23 talk him out of this. He says, "Are you really willing to
24 die? What about your family? What about your children?"
25 Here is the defendant in response on May 6th, 24 days

1 before he talks to the informant, "If you know a way that
2 I can do this that you can't explain except in person, let
3 me know and I will come to you and discuss this on my
4 dollar." He was seeking out on his own a way to violent
5 jihad.

6 The most that can be said on the defendant's behalf in
7 this regard is that the government's investigation gave
8 him his first real opportunity to pursue his violent
9 jihad. There is nothing wrong with the government's
10 investigation providing this opportunity. The court knows
11 that it is black letter law that providing an opportunity
12 to a defendant to commit a crime is not entrapment. It is
13 nothing of the sort. In fact, the FBI and the Seattle
14 Police Department did exactly what we would want them to
15 do in this situation, where the defendant brought his plot
16 to a citizen who was not an informant at the time, and who
17 fortunately brought the plot to law enforcement to
18 investigate. But for the grace of God, that's the way
19 this went.

20 Because if the defendant took his idea to someone
21 else, who either didn't turn it into law enforcement or
22 was sympathetic to the defendant, and had access to
23 weapons, this would have been a lot different.

24 The defense describes Mr. Abdul-Latif as, quote, "A
25 passive contributor to this plot," "someone who is not

1 capable of planning," "someone who took no independent
2 action to move this scheme forward." But the evidence
3 shows otherwise. The defendant directed major aspects of
4 this plot, he engaged in extensive planning and logical
5 thought about his attack.

6 I want to highlight three aspects of the evidence that
7 show this, because this really is critical to the issues
8 before the court. I would like to do that by playing some
9 brief audio clips. We have provided the court with
10 transcripts, which are in the order that I intend to play
11 them. The number of the exhibits are not in numerical
12 order, but I will walk the court through these. The
13 portions of the transcript that we will be playing have
14 the highlights next to them.

15 So three things here that I want to highlight. First,
16 the defendant chose the MEPS as the target. This is
17 undisputed. It is caught on tape the very moment that he
18 came up with this idea. You will hear that the informant
19 had no clue, as many of us didn't, what a MEPS was. And,
20 of course, the defendant did, because he processed through
21 a MEPS years ago.

22 The context for this audio clip is that the initial
23 plan, of course, was to attack Fort Lewis. And
24 Mr. Abdul-Latif and the informant were discussing at this
25 moment that idea. They were doing internet research. And

1 it is dawning on the defendant that an attack on a
2 military base like Fort Lewis may be a little bit beyond
3 his capabilities. And then he has the idea of the MEPS.
4 So if I could play this Exhibit 1, your Honor?

5 THE COURT: Ms. Wellman, do you have a copy of
6 these?

7 MR. LEVIN: Yes, we do.

8 THE COURT: All right. Please proceed.

9 (Audio played.)

10 MR. GREENBERG: The defendant not only picked the
11 target, but he articulated why it was a good target, it is
12 a soft target, there aren't weapons there, they will be
13 able to get more targets, kill more people.

14 He followed up on this, too. We detailed this in the
15 sentencing memorandum. The defendant called the MEPS
16 office three times the night of this conversation. Not
17 with the informant, on his own. He located it. He texted
18 the informant, unsolicited, about where the actual
19 location was. Initially they thought it was on Third
20 Avenue, but in fact it was on East Marginal Way. He found
21 that out.

22 He suggested they do physical surveillance at the
23 building, and then they did on June 8th. He and the
24 informant went and did physical surveillance.

25 That gets me to my second point, showing that the

1 defendant was an active participant and leader of this
2 plot, which is the discussion he has with the informant,
3 that I want to play for the court in a moment, about
4 security video cameras at the building. Because when they
5 went on June 8th to this building, one of the things the
6 defendant talked about right away is he saw the security
7 video cameras. He thought through the problems that those
8 might pose for the attack. And the following day, on
9 June 9th, he had this conversation with the informant.

10 If I may, your Honor? And this is Exhibit 7, the next
11 transcript in order.

12 (Audio played.)

13 MR. GREENBERG: This is lucid thought and planning
14 and problem solving, your Honor. He is planning this
15 crime.

16 The third point on this level is the fact that the
17 defendant planned the actual attack. He literally planned
18 the play-by-play, of where the attackers would go, where
19 they would throw grenades and the rest of it. This
20 happened on many occasions during the investigation. I
21 want to play two brief clips along these lines.

22 And these are times when the defendant and the
23 informant and Mr. Mujahidh, when he was in town, would sit
24 down with the hand-drawn map that the informant made at
25 the direction of the defendant of what this building and

1 the floor plan of the building looked like. And then the
2 defendant would use the map to give this play-by-play.

3 If I could go to Exhibit 3, the first clip from that?

4 (Audio played.)

5 MR. GREENBERG: Your Honor, the next clip is on
6 the very next page, a very short clip at the bottom.

7 (Audio played.)

8 MR. GREENBERG: That's the day before the
9 defendant's arrest. This is not a fantasy. This is a
10 serious plan with serious thought and serious planning.

11 Now, the defense criticizes the government's
12 investigation. And this is beyond me. They say there
13 should have been multiple offers to back out. They go so
14 far as to attach a 16-page article that says, quote, "If
15 you are doing a sting right, you offer the target multiple
16 chances to back out." Well, that's exactly what happened
17 in this investigation. The defendant repeatedly declined
18 the offers for him to back out. He demonstrated that he
19 was serious about this plot. And this happened on
20 multiple occasions.

21 I will review two briefly. One was on June 7th. And
22 these are attached to our sentencing memo. When the
23 informant said to the defendant, "I want to make sure that
24 you -- this is what you are down for. Do you want to go
25 in here? Do you want to do this as you were saying? Or

1 do you want to call it off? I'm not going to hold it
2 against you." And the defendant's response: "I'm ready
3 for this. Let's proceed as planned." And the only caveat
4 he gave was, "Unless we find out that the FBI is watching
5 us." He didn't want to back out.

6 The day before his arrest another very clear
7 opportunity for him to pull out of this was presented.
8 And this is Exhibit 6, your Honor. I want to play a brief
9 clip so the court can hear the response from the
10 defendant.

11 (Audio played.)

12 MR. GREENBERG: And then the rest of that page,
13 which I'm not playing the clip, the defendant not only
14 says, "No, I'm in, let's go forward," but he talks about
15 what to do if they get caught by law enforcement, that no
16 one should talk, no one should rat out. He didn't want to
17 back out of this thing, even though he had clear
18 opportunities to do so.

19 Yet, the defense continues to say this was fantasy,
20 all talk. The defendant was desperate to delay this and
21 get out of it. He never would have taken any actual
22 action. But the evidence, again, shows something very
23 different. The defendant was preparing for this attack.

24 And there are three things I want to highlight for the
25 court. Number one, he recruited Walli Mujahidh into this

1 plot. No one else did that. That is undisputed. This is
2 his best friend. He helped pay for Mr. Mujahidh's bus
3 ticket. He brought him from LA to Seattle to do this
4 attack. Why would you do that if this wasn't a real
5 attack? You simply wouldn't.

6 Number two, and this is very important, his financial
7 commitment to this plot. I know that there are two things
8 the parties will agree on here. Number one, the defendant
9 was pretty much broke, he didn't have much money. Number
10 two, his religious beliefs and observation of his religion
11 was very important to the defendant. And these two things
12 go hand in hand on this point here. Because even though
13 he had virtually no money, he scraped together \$800 cash
14 to buy machine guns.

15 And where did he get that money? He took it back from
16 a travel agent who had it on layaway for him to make a
17 religious pilgrimage to the Hajj. Well, it must have been
18 one of the most important things for this defendant to
19 look forward to. He literally chose his attack plot over
20 his religious observation.

21 If he thought this was fake and life was going to
22 continue on normally, as the defense would have you
23 believe, why would he deny himself the opportunity to go
24 to the Hajj in exchange for buying machine guns that he
25 was never going to use, according to him? That makes no

1 sense.

2 Third, the fact that he acquired and took possession
3 of machine guns is really the death knell here for the
4 defense argument. Why would he take possession of three
5 machine guns if he wasn't going to go forward with this?

6 That alone is a serious crime, possessing machine
7 guns, especially for a convicted felon. And he knew that.
8 On one of the recordings he said, "I could do five years
9 just for holding this." He knew that was serious
10 business.

11 He had the easiest out in the world. He could have
12 said, "You know what, guys, I'm broke, I don't have money,
13 we are going to have to kick this can down the road for
14 another time." But he didn't do that. He was eager to
15 get the machine guns.

16 He told Robert Childs -- And this is a clip I think
17 in the interest of time I will skip playing. But I
18 provided this to the court in the sentencing memo. He
19 told Robert Childs, "As soon as you get those guns, call
20 me. Don't get gas, don't go to the store, call me
21 immediately." He wanted those guns.

22 Your Honor, here is a photograph of what he did with
23 those guns when he got them. They were delivered to
24 Abdul-Latif and Mr. Mujahidh, and they practiced with the
25 guns, they tried to learn how to use them. They talked

1 about using them. They were very excited.

2 And then moments before the arrest, the defendant
3 there with the blue bag slung over his shoulder, he had
4 all three of those machine guns, and he was going to take
5 them to hold onto for training. He never would have been
6 in this situation right here if he didn't intend to go
7 forward.

8 And there was talk on the recordings of delaying the
9 attack. And that wasn't because the defendant was trying
10 to kibosh this thing. It was reasonable and realistic to
11 delay this plan. They had to get the guns, they had to
12 get together in Seattle, they had to train and practice
13 together. Anyone who wanted to make this a successful
14 attack would have delayed this for some period of time
15 until they were ready.

16 I would be remiss, your Honor, if I didn't comment for
17 a moment on the would-be victims of this attack. The
18 court knows from the briefing that the defendant planned
19 to do this on a Monday or Tuesday. That's the day when
20 the most recruits are at the MEPS. There is an average of
21 60 employees and officers at the MEPS on a given day. On
22 a Monday or Tuesday, an average of 82 recruits, many of
23 whom have family members with them for that special
24 occasion. And there are countless other federal employees
25 that work at a variety of agencies and offices in that

1 same Federal Center South building that undoubtedly would
2 have been killed in this attack.

3 And then the childcare center. I know this is
4 difficult to stomach for everyone in this courtroom, and
5 probably even for Mr. Latif, but the reality here is many
6 children would have died if this attack went forward. The
7 childcare center in that building is located immediately
8 adjacent to the MEPS. And this is a building floor plan
9 with the MEPS office space highlighted in green, or
10 bordered in green, and the childcare center bordered in
11 red. They are literally right next to each other.

12 And in this corner here, your Honor, the lower
13 right-hand corner of the MEPS office that I'm outlining,
14 is the battalion commander's office, essentially the
15 highlight of the defendant's planned attack. He talked
16 about it all the time.

17 And here is a view of the interior of the commander's
18 office. You can see right outside of the window is the
19 playground for this childcare center. Here is an exterior
20 look of the commander's office and the playground.

21 An attack on that office, especially one with machine
22 guns or grenades, would simply have been devastating.

23 Now, the defendant says that he didn't intend for
24 children to die. And he did say that on the tapes. And
25 he probably didn't intend for children to die. But he

1 knew this playground was there because he saw it and he
2 commented on it in one of the recordings.

3 When you undertake a plan like his, you know there is
4 going to be unforeseen fatalities. It is just not enough
5 to say I didn't intend for that to happen.

6 One of the reasons behind the government's sentencing
7 recommendation is that we view this defendant as a future
8 danger to the community. Obviously this attack plan was
9 heavily influenced and inspired by the radical ideologies
10 of Osama Bin Laden and the like. The defendant has not at
11 all renounced those ideologies that inspired his planned
12 attack. In fact, in his letter to the court there is
13 really no significant expression of remorse. There is no
14 acknowledgment of the would-be victims and how they must
15 have felt when they learned about this plot. There is
16 nothing of this sort.

17 What he does say is that he was, quote, "emotionally
18 driven," quote, "not thinking with my head, but from my
19 heart." These ideologies are what is in his heart. And
20 that's why we view him as very dangerous upon his release
21 from prison.

22 The mental health evidence here is a double-edged
23 sword, because the defense paints him as a follower,
24 easily influenced. We have every reason to believe he
25 will continue to be under the spell of these ideologies

1 when he gets out of jail. He will be just as dangerous
2 then as he is now, which is also why we ask the court to
3 impose a lifetime term of supervised release.

4 The defense asks for a 17-year sentence, and they
5 point to evidence they say is mitigating: Mental health,
6 his difficult upbringing, this is a sting case, he has
7 been in solitary confinement.

8 The bottom line, your Honor, as to this evidence, to
9 the extent the court views any of it as mitigating, I
10 would submit that the plea agreement that the parties
11 entered into has already built in that mitigation. A
12 19-year sentence is already sufficiently mitigated. The
13 guidelines call for a life sentence. There was a 30-year
14 mandatory minimum here. I would submit that a 19-year
15 sentence gives the defendant full credit for any
16 mitigation, to the extent it is deserved.

17 Your Honor, we recommend what we believe is a fair and
18 just sentence in this case, a 19-year prison term, and a
19 lifetime term of supervised release.

20 THE COURT: Thank you.

21 MS. WELLMAN: Good morning, your Honor.

22 THE COURT: Good morning.

23 MS. WELLMAN: I would like to begin with just a
24 couple of, for lack of a better word, housekeeping
25 matters. One, I wanted your Honor to know that Ms. Binta

1 Moussa-Davis is in the courtroom on behalf of
2 Mr. Abdul-Latif, as she has been for all hearings.

3 Two, we have moved to seal all exhibits that were
4 attached to our sentencing memorandum. And I realized in
5 hindsight that really there is only a justification for
6 the defense expert report, that goes from Page 1 through
7 110. We have no objection to your Honor unsealing the
8 remainder of the exhibits, including Abdul-Latif's letter
9 to the court. I am happy to provide a revised copy of
10 that after this morning.

11 The third thing is, although Abdul-Latif is not
12 comfortable speaking before your Honor today, you do have
13 his letter. It is important, given your Honor's comments,
14 that despite his note to your Honor that he dreams of
15 being able to see his young son walk out of high school
16 from anywhere but the confines of his cell, he stands by
17 the plea agreement, as do Mr. Levin and I, and support it.
18 I believe it is fair and just.

19 THE COURT: Ms. Wellman, let me stop you there.
20 What Mr. Abdul-Latif wrote, at least the way I read his
21 remarks, was that I had the ability to sentence below,
22 which I do, but that there would be no consequence to
23 that, and it was something that he urged me to consider.
24 The point I want to make is, my understanding of
25 11(c)(1)(C), should I sentence outside the range that is

1 specified there, either side has the opportunity at that
2 point to withdraw from the plea agreement. That seemed to
3 me to be somewhat inconsistent to the advice that
4 Mr. Abdul-Latif understood. That was the point I was
5 trying to make.

6 MS. WELLMAN: Thank you, your Honor, for
7 clarifying. I believe Mr. Abdul-Latif does understand
8 that, your Honor. I think it was more indicative of his
9 hope and what is driving him in terms of the significant
10 penalty that he has agreed to endure.

11 The third thing is, despite our disappointment in how
12 this investigation unfolded, I do believe that -- we
13 appreciate that Mr. Dion and Mr. Greenberg ultimately
14 exercised some restraint and reason and responsibility to
15 resolve the case in a fashion that also benefits the
16 co-defendant Walli Mujahidh.

17 We, of course, do not agree in terms of the
18 appropriate sentence, but they were respectful of and
19 listened to our concerns that by virtue of their agent's
20 misconduct in this case we had little means of achieving a
21 fair trial no matter what rulings your Honor did make.

22 And when we struggled with the Bureau of Prisons over
23 the course of the last two years with respect to his
24 isolation, they did listen and try to help us in that
25 regard. And for that we thank them.

1 We, nevertheless, do disagree that an additional two
2 years, and a lifetime of supervision, somehow better
3 serves any legitimate goal of sentencing than the 17 years
4 that we have asked for.

5 THE COURT: I am going to interrupt you just to
6 add one more point for you to cover. Mr. Greenberg said
7 something that I have in my notes, which is, I find a
8 tension between your five-year period of supervised
9 release and the material you presented in terms of the
10 continuing nature of Mr. Abdul-Latif's situation. I would
11 like you to cover that as part of this.

12 MS. WELLMAN: Thank you, your Honor. The
13 five-year term of supervision, we basically deferred to
14 the Probation Department, which not only has better
15 knowledge of their resources and responsibilities, but
16 also their mission. It also is in keeping with the other
17 cases of this nature, with the kinds of supervised release
18 terms that were imposed in cases that did not go to trial,
19 but instead were resolved by plea. They seem to vary
20 between five years and ten years. But, for the most part,
21 five years.

22 Our contention with the government in that regard is
23 they seem to be saying -- well, they did in their
24 memorandum, that life is necessary, quote, "It is a
25 mechanism in place to always monitor Abdul-Latif's

1 activities," end quote. First, that is not the Probation
2 Department's role. Their role is to help a defendant
3 transition back into the community and to, quote, "bring
4 about long-term positive change in this individual under
5 supervision." If this case teaches us anything, it is
6 that the government is hardly lacking in their ability to
7 otherwise monitor or target people who engage in rhetoric
8 against the United States.

9 Mr. Abdul-Latif does not require monitoring for the
10 rest of his life. Again, it was in their memorandum, as
11 well as repeated here today, that it seems to stem from
12 the idea or assumption that Mr. Abdul-Latif has not
13 disavowed the radical ideology, nor expressed meaningful
14 remorse for his conduct to the Probation Department, the
15 court or the experts. In that regard, they are simply
16 asking your Honor to ignore his letter to the court, as
17 well as the fact that he pled guilty.

18 Second, none of the experts were asked to address his
19 feelings now. All were trying to assess his psychological
20 makeup leading up to and at the time of the offense.
21 There was no reason for that topic to be broached.

22 And, third, yes, he is still a Muslim. But you can be
23 a practicing Muslim and not be a radical terrorist. To
24 assume otherwise invites the kind of discrimination and
25 hostile attitude that is rightly so criticized for many

1 reasons. The court should not condone that kind of
2 unfairness.

3 What the government left out in quoting Abdul-Latif's
4 letter to your Honor is the fact that he also said I have
5 seen the error of my ways. His wife echoes those exact
6 same sentiments. So a lifetime of supervision really
7 serves no legitimate purpose.

8 In terms of the gravity of the offense, no doubt it
9 makes it very difficult for anyone, most importantly the
10 government and the Probation Department, to look at any
11 other facts in the case, including the offender before the
12 court. But we cannot be so appalled by the offense that
13 we lose sight of the offender.

14 Our point is that a fair assessment of the case asks
15 this court to look at the man, who from a very early age
16 did not have a chance.

17 We also ask your Honor to, in understanding the
18 offense conduct, and understanding Abdul-Latif's role in
19 the offense, that your Honor should consider the
20 informant, his actions and the misconduct of all of the
21 government agents. Those facts do inform the nature and
22 circumstances of the offense, and they do inform
23 Mr. Abdul-Latif's role.

24 In looking at the seriousness, the government really
25 almost entirely ignores both of these considerations, and

1 as argued today, rests largely on the idea that
2 Abdul-Latif -- this was all Abdul-Latif's idea, he
3 recruited Walli, and the notion that he engaged in
4 detailed planning as a mastermind, if you will. That's
5 what we are saying: He is not. He did embrace the plot.
6 He did participate in it. That's why we are before the
7 court. But they are layering a sophistication to
8 Abdul-Latif that, with all due respect, is simply not
9 there.

10 In terms of Walli, as noted by the Probation Office,
11 there is insufficient evidence to suggest that Abdul-Latif
12 recruited Walli and directed him as a subordinate. The
13 government didn't object to that conclusion during the
14 presentencing process.

15 The evidence really just showed two friends that may
16 have been talking about the documented atrocities
17 overseas, but there was only talk before Childs came onto
18 the scene.

19 Abdul-Latif -- There is evidence in the recordings
20 that Childs manipulated and groomed Walli. I think that
21 is best addressed by his own attorneys when he appears
22 before the court for sentencing.

23 When the government notes that Abdul-Latif is waffling
24 around June 10th, June 11th, they say we have got to push
25 this Walli thing. So I think it is unfair and incorrect

1 to suggest that Abdul-Latif is more egregious, or is
2 somehow a leader because Walli came on board.

3 In terms of the notion of planning and developing the
4 plan, there is two main categories. Again, really the
5 government wants this court to ignore the facts about the
6 informant, and simply trust his words about the inception
7 of the plan.

8 It also asks your Honor to basically ignore
9 Abdul-Latif's life and limitations, and how the
10 investigation was orchestrated and manipulated by the
11 government.

12 In fact, there is only two lines mentioned in their
13 entire memorandum with respect to the informant. They
14 say, "The use of an informant does not mitigate against
15 culpability." And, of course, the informant inevitably
16 had to be a part of the planning. The use of an informant
17 is not what insults the defense in this case. What
18 insults us is that they used a manipulative, narcissistic,
19 incredibly heavily paid informant, and then allowed that
20 person to -- and his handler to destroy evidence that was
21 critical to our entrapment defense and a fair trial.

22 The informant, self-described as a barracuda, is not
23 an honest man. I am not going to repeat all of the
24 information set forth in our memorandum. I trust your
25 Honor read it. But I would like to highlight a portion of

1 the transcripts that from our perspective really
2 demonstrates how Childs operates, and was allowed to
3 operate, given the blind reliance on his word and
4 entrusting him with evidence.

5 His excuse for destroying the evidence was that he
6 didn't want to get in trouble with his CCO officer. The
7 chrono reports, however, show that he met with his CCO
8 during the sting operation, and one can only assume she
9 was doing her job right. At one point she does comment
10 that she should have been more strict with him, in terms
11 of penalizing him when he messed up. But there is no
12 mention in the chronos of any sexting or inappropriate
13 internet activity before she looked at the phone on
14 September 12th. He had destroyed it before July 1st,
15 2011.

16 By the time the federal authorities finally asked him
17 about it, which is eight months later, he had already been
18 in trouble five months before for the September sexting
19 and using the internet and possession of pornography. So
20 what it tells me is that it is a transparent excuse that
21 is repeated by the government, it is convenient.

22 What is interesting, in terms of understanding this
23 man's mentality, is that he doesn't admit the violations
24 when questioned until his CCO then says, well, then let me
25 see the phone. Then, oh, here is more information. Even

1 then he tries to manipulate the facts.

2 I would like to play for your Honor a clip from one of
3 the transcripts provided. This is CCO Jackson describing
4 what the informant has done and how she found out about
5 it.

6 (Audio played.)

7 THE COURT: Can we start over?

8 MS. WELLMAN: Sure.

9 (Audio played.)

10 MS. WELLMAN: I would note, your Honor, we were
11 not provided with this information from the government.
12 We had to secure it ourselves.

13 What is also telling is that when he is asked to
14 explain the violation, he has an answer for everything,
15 until he is confronted with the facts, where he changes
16 the answer, and then again repeats that he doesn't want to
17 make any excuse, but he has justification.

18 I would like to play a portion of that.

19 (Audio played.)

20 MS. WELLMAN: This is the man we are supposed to
21 trust about the inception of the plot.

22 In terms of the notion of once Abdul-Latif does
23 embrace the plot, and our point is that he is manipulated
24 along the way, the government really ignores the
25 manipulation within the entire plot. I am not going to

1 repeat what we noted about the June 6th recording. I
2 think excerpts were played this morning, and you can see
3 it is in the infancy, in that Abdul-Latif and Childs are
4 really talking about it for the first time.

5 Thereafter, we do believe there are plenty of excerpts
6 that show the informant is manipulating Abdul-Latif, as is
7 the informant's handler, to keep Abdul-Latif on course.

8 For instance, Childs gave Abdul-Latif a map of the
9 MEPS that didn't have the childcare center. Abdul-Latif
10 has repeatedly said throughout all of the recordings his
11 concern about women and children. On June 10th Childs
12 assures Abdul-Latif that there are no civilians at the
13 MEPS. Childs later asked, was I right, did I get that
14 right, that it is only military? DeJesus says no, he
15 wasn't, but it didn't matter. Well, it does matter.
16 Because, here again, we have a moment where we don't know
17 what would have happened if they had not manipulated the
18 facts. The emir examples in our memorandum, I won't
19 repeat that.

20 But I also think the no way out is also an example of
21 the manipulation here, although the government reads it
22 differently. I did not hear the government say it
23 disagrees with the fact that if you are doing a sting
24 right, you offer multiple chances to back out. There are
25 only two occasions in this case where that topic was

1 broached by the informant. June 6th, the informant is
2 questioning Abdul-Latif, does he want to go through with
3 it. Abdul-Latif ultimately responds, if something major
4 happens, like FBI watching, for example, then we will call
5 it off.

6 Then June 21st, during a lunch with the informant and
7 Walli, the informant says, hey, you both can back out; I
8 wouldn't hold it against you. This falls far short of the
9 multiple chances to back out, particularly when you look
10 at the facts between those two days.

11 On June 6th, and I believe the government played it
12 for the court today, Abdul-Latif is really raising a
13 number of items about -- concerns about the attack that
14 are causing him pause. If you hear it, Childs has an
15 answer for every single concern.

16 Abdul-Latif earlier on is saying, "I am getting off
17 work, I am tired, I want to go watch the NBA finals," and
18 then he starts rambling about there's no element of
19 surprise, where is the door, the concrete barrier. Each
20 time Childs has something to say, no problem, it is easy,
21 this is an easy solution. It is against that dialogue
22 where he says, by the way, you can back out if you want.

23 On June 8th, at Disk 520, Abdul-Latif is looking to go
24 abroad. Childs directs him back to the plot. He says,
25 quote, "You've got something chosen. Let's just stick

1 with that now. Let's not move around different, you know,
2 because when you start doing that, you are going to start
3 losing focus. It gets easy to be scatterbrained."

4 On June 10th Childs tells Abdul-Latif repeatedly to,
5 quote, "Stick with the plan." He later admits to the
6 authorities that what he was trying to do is, quote,
7 "Bring him back to just one plan."

8 By this point, June 10th, June 11th, law enforcement
9 has notice that there has been a lot of talking -- just
10 talking, and the fact that Childs is more aggressive than
11 normal, he is jabbering. Detective DeJesus tells the
12 informant, you did good, but you did too good.

13 And when he gets in trouble for introducing a fourth
14 person to the plot, the informant says no problem, it is
15 super easy for me to just tell Abdul-Latif they won't use
16 a fourth.

17 The agents then have to explain to Childs basically an
18 entrapment defense, that if he is the one introducing the
19 fourth person, then it is the informant's idea, it is not
20 Abdul-Latif's. And Childs simply responds, well, I am
21 just getting comfortable in my role. DeJesus responds,
22 that's the thing we don't want. We don't want you to lead
23 the attack. He is instructed, the more you talk, the less
24 he, meaning Abdul-Latif, can't talk.

25 They also notice that Abdul-Latif is waffling. Again,

1 this is June 10th, June 11th. According to DeJesus, he
2 specifically says, Abdul-Latif -- it is hee and haw a lot.
3 They note with curiosity that this is no longer a suicide
4 mission, that there is some idea that these guys will get
5 out alive.

6 Detective DeJesus comments, quote, "I think he is
7 thinking about some more -- his family. And then the
8 combination of that and your coming in, you know, a little
9 more aggressive than normally, I think has got everybody
10 mixed up." So the plan on the 10th and 11th is,
11 quote-unquote, "Step back a little bit," and "let things
12 simmer." These are the instructions of the handler.

13 THE COURT: Ms. Wellman, I'm sorry to make you
14 backtrack. But I am confused on one point. I understand
15 that the origination of the MEPS location came from
16 Mr. Abdul-Latif. That's the implication that I have taken
17 from the tape that has been played previously and that I
18 have read in the transcript. Are you now telling me that
19 you challenge that assertion?

20 MS. WELLMAN: That I challenge on June 6th
21 Abdul-Latif and Childs discussed --

22 THE COURT: Who originated the first mention of
23 the entrance processing station?

24 MS. WELLMAN: I believe that was Abdul-Latif
25 during the conversation on June 6th, including Childs.

1 THE COURT: Is there anything in the record that
2 is inconsistent with that?

3 MS. WELLMAN: On June 6th?

4 THE COURT: That that's not the first time it has
5 come up, and that Mr. Abdul-Latif is the one who
6 originated it?

7 MS. WELLMAN: No, your Honor. There are no
8 recordings before that time because of the choices made by
9 the government and then the misconduct of the informant
10 and Detective DeJesus.

11 THE COURT: I understand that. I am very aware of
12 it. The question I have is, you certainly have not been
13 hesitant to call out other facts that you say came from
14 Childs, and that they didn't originate. And I have not
15 heard you make that argument -- I want to make sure I
16 understand where you are on that now. Are you telling me,
17 yes, it did originate, or you don't want to take an
18 opinion on it, or do you contend that it was originated by
19 Childs?

20 MS. WELLMAN: I do not contest the recordings from
21 June 6th. It is a conversation, and it related to the
22 MEPS. And that is Abdul-Latif's voice saying, "How about
23 the MEPS?" I do not contest that fact. I contest sort of
24 the environment in which that conversation was
25 orchestrated.

1 So getting back to basically where we were, in an
2 off-camera moment between the informant and the detective,
3 they are saying, let's step back a little bit. The
4 informant is specifically told, let Abdul-Latif call you.
5 That doesn't happen, actually. The informant calls
6 Abdul-Latif at 1:00 the next day. It looks like from the
7 text message traffic between DeJesus and Childs that the
8 informant is essentially operating with DeJesus
9 essentially at his side. The text messages between
10 DeJesus and the informant start at 9:12 in the morning on
11 June 12th, and they go back and forth before and after the
12 informant calls Abdul-Latif at 1:00. And all told there
13 was about 40 text messages exchanged. And, of course,
14 those were destroyed, so we don't know the content. But
15 clearly they are moving forward as planned.

16 They also didn't leave Abdul-Latif alone. Again, they
17 were supposed to simmer a bit, in the words of the agents.
18 But instead, they immediately start saying we need to,
19 quote, "Push the Walli thing and get him up to Seattle."
20 And, "We also need to push the weapons."

21 Again, if there was no reluctance on the behalf of
22 Abdul-Latif, why the push, why the rush?

23 As instructed, the informant does continue to push.
24 He tells Abdul-Latif the dealer was questioning why he was
25 going back and forth and hadn't decided yet on what

1 weapons he wanted. He even tells them -- the informant
2 tells Abdul-Latif that they have to be sure because there
3 is no way once we decide, hey, we don't need these
4 anymore. He then surprises Abdul-Latif with a
5 show-and-tell that Abdul-Latif had no knowledge of before
6 it happened, on the heels of which the informant pressures
7 Abdul-Latif for money. "You have seen them, now you have
8 to pay." Quote, "He just wants to make sure we are
9 serious, so that's why we have to give him this in good
10 faith."

11 Abdul-Latif on the recordings complains about the
12 pressure, noting that the informant has called him three
13 or four times during the days to get him to get the money.
14 So Abdul-Latif gave in. But like Childs' victims, he
15 groomed and manipulated Abdul-Latif, who was all talk
16 before the informant came along. You agree to do this,
17 you stick with the plan. I show you the weapons, you have
18 to pay. You've paid, now look how serious you are. The
19 government's recommendation completely ignores these
20 facts, but your Honor should not.

21 Our recommendation for 17 years is really informed by
22 five different areas: One, the mitigating facts about the
23 offense itself that I have just discussed, none of which
24 change, of course, the fact that Abdul-Latif embraced the
25 idea of attacking MEPS as set forth in our plea agreement.

1 For that, Abdul-Latif is remorseful, and he must be
2 penalized. But 17 years in prison is hardly a slap on the
3 wrist, and is enough to capture the offense conduct.
4 Whereas, here the informant and the government really did
5 provide the plot, the means and the opportunity,
6 manipulating Abdul-Latif along the way with the helping
7 hand of the government.

8 Second, the government's intentional destruction of
9 evidence should inform the court's decision. I am not
10 sure what more to say because, as your Honor noted, you
11 are very aware of the facts.

12 I will say this, despite this being an orchestrated
13 operation that is supposed to be gathering evidence, the
14 informant's role from the inception of the conspiracy
15 really remains undocumented. Law enforcement made that
16 decision. Law enforcement decided not to record the early
17 communications between Abdul-Latif and the informant. The
18 informant destroyed all communications, including text
19 messages that were exchanged with the other SPD paid
20 informant who orchestrated and brokered the original deal.

21 And then the informant lied to law enforcement about
22 its destruction.

23 Our investigation disclosed, in addition to the
24 informant's actions, that the detective himself had
25 destroyed approximately 400 text messages between him and

1 the informant during this 20-day investigation.

2 The handler, like the informant, lied, lied to the
3 government, regarding that destruction, by omission of
4 fact, until confronted with the defense evidence.

5 It is not surprising when the actual facts about his
6 employment history were uncovered. You know, looking at
7 the reprimand back in the '90s, he understood even the
8 loss of a wallet was enough to compromise the prosecutor's
9 case. And yet, here we are again, having him do the same
10 thing, only in a much more vast case. Instead of being
11 sanctioned for that destruction, the informant is paid
12 over -- nearly \$100,000, although I don't know the exact
13 figure today because no additional information has been
14 brought by the government. But, also, the detective is
15 made detective of the year. The government strangely
16 makes no apologies for this conduct, and makes no mention
17 of it in its sentencing recommendation.

18 Interestingly, and I believe he was addressing a
19 different moment, but said today SPD and FBI did exactly
20 what we wanted them to do. I don't think this is what
21 they wanted them to do, but they did not take the steps
22 necessary to make sure it didn't happen. A reasonable
23 sentence should take into account the intentional acts
24 that directly impacted Abdul-Latif's ability to go to
25 trial and have a complete defense.

1 The third factor is Abdul-Latif's life and history.
2 I'm not going to try to better summarize that history than
3 our experts, but I will address some of the comments by
4 the government in their memorandum.

5 I disagree that the 19 years somehow calculates the
6 history and the mitigators of Abdul-Latif's life. I think
7 that 19-year cap, if anything, reflects the seriousness of
8 the offense when no other factors are considered.

9 Abdul-Latif's life cannot be ignored. The Probation
10 Department summed it up by saying he was raised with
11 little to no parenting and lacked guidance as a youth.

12 As reflected in the reports of our experts and the
13 documents that back those reports up, that barely scrapes
14 the surface of the kind of neglect and abandonment that he
15 suffered throughout his life. It absolutely fails to
16 encompass the cognitive functioning and limitations of
17 Abdul-Latif. I believe that the cognitive deficits are
18 best explained by Dr. Adler, which is at Page 46 of our
19 exhibits, and how that plays out. All of those facts are
20 mitigating factors that made Abdul-Latif the perfect
21 target for someone like the informant.

22 The government takes issue also with Dr. Salusky's
23 report, stating he took everything Abdul-Latif said as
24 true. That really ignores the fact that Dr. Salusky not
25 only read all of the historical documents, and to the

1 extent it is humanly possible, made note of those
2 documents in his summary of the facts. But it also said
3 Abdul-Latif is a poor historian. It also ignores the fact
4 that a psychologist needs to listen to what their client
5 is saying. It doesn't mean they take it at face value.
6 It means they now have an understanding of what is true to
7 the client, not what is necessarily true from a
8 psychological standpoint.

9 There is no battle of experts here, because even
10 Dr. Muscatel noted that Abdul-Latif is passive,
11 unassuming, seeks the approval of others, is socially
12 alienated, and prefers to avoid conflict so as to avoid
13 assertion.

14 The government's other two experts also agree there is
15 a documented history of grand mal seizures, and there is
16 significant impairment on neuropsychological testing.
17 These facts should inform the court's decision.

18 The fourth category is that he has been punished, and
19 the collateral consequences of his decision. Seventeen
20 years, again, is not a slap on the wrist. He has spent
21 the last two years, two years, in isolation. Only by
22 virtue of our litigation did the circumstances -- the
23 conditions of that confinement improve.

24 The collateral consequences include the impact on his
25 family as well. And I think that his wife Binta, in her

1 letter to your Honor, best describes the heartache there.
2 Those two inform the defense recommendation.

3 The final factor that informs our recommendation, your
4 Honor, is the need to avoid unwarranted disparities. I
5 agree with the government that it is very difficult to
6 find any particular case directly on point with the same
7 facts to dictate or inform your Honor's decision here.
8 But it, nevertheless, is an important 3553 factor, and it
9 is one that should be informed by the facts, not simply a
10 list of cases and bottom-line sentences.

11 The government named a number of cases, including
12 El-Khalifi, Finton, Martinez, Cromite, to name a few, to
13 support the notion that, quote, "The majority of sentences
14 fall somewhere between 20 and 30 years." Well, that might
15 be true for someone who engages in an actual and
16 unsolicited act of terrorism, or those found guilty after
17 trial, but is not true for cases orchestrated like this
18 one.

19 Cromite, the defendants there went to trial. The
20 court had no choice. Although she could have imposed
21 life, she went with a mandatory minimum of 25 years.

22 El-Khalifi, that was an immigrant in the country
23 illegally. He tried to detonate a bomb in a suicide
24 attack at the U.S. Capitol building. It involved an FBI
25 agent as the undercover, who posed as an armed extremist

1 group. The client was taken into custody as he began to
2 walk towards the capitol carrying a Mac-10 automatic
3 weapon, and wearing a vest containing what he believed to
4 be a functioning bomb.

5 Finton, an American convert to Islam, attempted to
6 bomb a federal building and a congressman's office. After
7 receiving money from someone in Saudi Arabia, he then flew
8 to Saudi Arabia and spent a month there. When he returned
9 he somehow came in contact with an FBI agent who posed as
10 an al Qaeda operative. They put the plan in motion.
11 Finton drove a truck filled with what he believed were a
12 ton of explosives to the location, and then with the FBI
13 agent, drove away, and then tried to detonate the
14 explosives from his cell phone.

15 Both Finton and El-Khalifi involved far more
16 significant steps, and in the case of Finton, an actual
17 terrorist organization.

18 The same is true for Martinez, Smadi and Ahmed. The
19 difference from all of these cases, though, is none of
20 these cases involve -- These cases involved an FBI
21 informant, skilled at making sure people have the means to
22 get out, making sure that they are not leading the attack,
23 and hardly the same as the kind of manipulative, deceitful
24 informant we have in this case.

25 None of these cases include the intentional

1 destruction of evidence. The two cases that we do share
2 in common in our briefs is Amawi and Ferdaus. The
3 government cites Amawi and simply notes a 20-year term was
4 imposed. As we set out in our defense memorandum, Amawi
5 was the only defendant in that case who received 20 years;
6 the others received 13 and a half and eight, respectively.
7 More importantly, the 20 years was imposed post-trial.

8 That leaves Ferdaus. Ferdaus was arrested around the
9 same time as Abdul-Latif, and it included a mentally
10 vulnerable target, Ferdaus, and a dirty informant. It did
11 not, to counsel's knowledge, include the destruction of
12 evidence. Ferdaus received 17 years.

13 Can the court impose 19? You can. But the question
14 is, should you? And our position is humanity, common
15 sense and justice says no. An additional two years does
16 not better serve any legitimate goal of sentencing.

17 Thank you, your Honor.

18 THE COURT: Mr. Abdul-Latif, I understand that you
19 may not wish to address the court, but I need to alert you
20 you have that opportunity. I draw no inference one way or
21 the other. We do this every Monday, you don't. If you do
22 wish to address the court, you can just slide the
23 microphone over and speak from where you are. That choice
24 is entirely up to you, sir. But I do need to advise you
25 that you have the right if you wish to do so.

1 MR. LEVIN: Your Honor, Mr. Abdul-Latif stands by
2 his letter. He doesn't wish to address the court.

3 THE COURT: All right. Counsel, I have lived with
4 this case for a while, and I think I have a good
5 understanding of it. It has taken a number of unusual
6 twists and turns as we have proceeded.

7 The current sentencing regime in the Ninth Circuit
8 advises me at this point that I am to state my conclusions
9 regarding total offense level, criminal history category
10 and guideline range, and that I am to take that as my
11 starting point and to remain cognizant of it throughout
12 the process.

13 Having established those criteria, I don't think that
14 there is any real dispute that this would be a total
15 offense level of 48, a criminal history category of 6 and
16 a guideline range sentence of life imprisonment.

17 As I explained at the beginning, however, the court
18 accepted the Criminal Rule 11(c)(1)(C) plea in this
19 matter. As a part of that acceptance I obligated myself
20 to sentence between 17 years and 19 years, unless I wish
21 to set aside the guilty plea, or give the parties the
22 opportunity to set aside the guilty plea.

23 What I understand my role to be is that, even in the
24 use of an 11(c)(1)(C) plea, I am to look to 18 U.S.C.
25 3553(a), with a touchstone of a sentence which is

1 sufficient but not greater than necessary to acknowledge
2 the considerations that are set out in that statute. So
3 in helping me decide between 17 to 19 years, I am going to
4 conduct the traditional 18 U.S.C. 3553(a) analysis, which
5 is the format that each of the briefs that were submitted
6 in this matter the arguments are set out in.

7 The first of those factors is the nature and
8 circumstances of the offense. Parenthetically, I would
9 note that this is an unusual case, one that this court has
10 not had before, in that certain of the evidence presented
11 came to the court under the Classified Information
12 Procedures Act. Because of the nature of that material or
13 the processes used to collect it, it is not made available
14 to the defendant. It is, however, made available to the
15 court. The court is assigned the duty of making sure that
16 things that could serve as exculpatory evidence are
17 provided to the defendant.

18 I can say that most, if not all, very close to all of
19 the information that I have used in this is available to
20 all of the parties, and I have largely used the statement
21 of facts found in the plea agreement in arriving at my
22 decision.

23 Turning then to the first of those factors, the nature
24 and circumstances of the offense. Mr. Abdul-Latif pled
25 guilty to conspiracy to murder officers and employees of

1 the United States, and guilty to conspiracy to use weapons
2 of mass destruction.

3 As I have gone through my notes from all of the
4 hearings held in this matter, of which there have been a
5 number, I believe that it is a fair statement of the case
6 that there was a conspiracy to kill United States military
7 personnel in retribution for perceived wrongs committed by
8 the United States in the Middle East, and that that
9 conspiracy planned an attack on a military entrance
10 processing station here in Seattle.

11 The evidence fairly read is that Mr. Abdul-Latif held
12 meetings to organize this, that he conducted surveillance
13 of the location, that he ordered and purchased weapons to
14 carry out the attack, that the location was his idea,
15 evidencing some familiarity with military service. That
16 included planning the attack on a day when recruits being
17 processed would be present, with a stated intention of
18 killing the mostly young people who would be there, and
19 not just the older guards. And, sadly, which
20 Mr. Abdul-Latif now regrets, and I accept that, that
21 killing these young people would appear on various news
22 outlets and inspire others to commit similar acts.

23 Based on that, I find that the motivation for this
24 attack was terrorism, and that the idea of an attack was
25 the defendant's, an activity which he described at one

1 point as a violent jihad.

2 In response to those arguments the defense makes a
3 number of counter arguments. What Ms. Wellman just
4 described as the mitigating facts regarding the
5 activities, or more precisely the entrapment activities, a
6 broadside attack on the veracity of the confidential
7 informant used by the Seattle police, a broadside attack
8 on the, at best, sloppy and alleged to be intentional
9 destruction of evidence, not only by the confidential
10 informant but by the Seattle police officer who supervised
11 him, those would all fall under the nature and
12 circumstances of the offense.

13 I will restate again, as there is a plea agreement in
14 this matter, and there has been a plea of guilty, I don't
15 intend to revisit entrapment as it regards guilt, but I do
16 consider it as part of Factor One in the 3553(a) analysis.

17 I disagree with the assertion that the offense did not
18 involve any real threats or loss of lives. It is true
19 that it did not take place, and mercifully we did not have
20 any loss of lives.

21 I think that is something that all of us, including
22 Mr. Abdul-Latif, are thankful for.

23 I disagree, however, that the plot was manufactured by
24 a deceitful, manipulative, paid informant. The government
25 did not provide the instigation of this plot. I go back

1 to the YouTube videos which begin long before the
2 involvement with the confidential informant, in which
3 Mr. Abdul-Latif speaks in the language of violence, and
4 wishes harm to those people who he feels are acting badly
5 in foreign affairs.

6 There are a lot of transcripts of conversations in
7 which I hear Mr. Abdul-Latif in his own words saying
8 things that make it clear that he was an active
9 participant in this conspiracy.

10 There is nothing in my remarks today which should be
11 taken as expressing approval of the confidential informant
12 or of the handling of the evidence in this matter, which
13 had reached a point where the government's case was going
14 to be impacted, and which both sides wisely viewed as a
15 good time to reach a resolution of this.

16 But in regards to that first factor, nature and
17 circumstances of the offense, I believe the government,
18 the defense and the court are all of the view that these
19 crimes are indeed serious crimes. Were this matter
20 treated as a starting point, it would be a sentence of
21 remarkable length, in which Mr. Abdul-Latif would be
22 removed from society.

23 I turn then to the second consideration, the history
24 and characteristics of the defendant. Mr. Abdul-Latif is,
25 I believe, still 35 years old. He is a father. He has a

1 five-year-old son. He has a wife who has been supportive,
2 attended all of these hearings. He came from a very
3 difficult childhood, in which he lacked guidance and
4 upbringing, and was largely ignored by his parents when he
5 was younger.

6 It also is clear from all of the evidence that is
7 before the court that the defendant believed in the
8 teachings of certain individuals, and that the views that
9 he held would be considered radical political views that
10 endorsed a violent ideology. I would stress that I said
11 "radical political views," and not radical Islamic views,
12 because there is a wide variety of views inside of Islam.
13 Mr. Abdul-Latif chose to become affiliated or follow a
14 particular political view espoused by some people that,
15 unfortunately, endorsed violence as an ideology.

16 The remainder of my comments in regards to the history
17 and characteristics of Mr. Abdul-Latif are somewhat
18 compromised by the fact that the parties during the course
19 of this litigation stipulated that during mental exams no
20 questions about the offense conduct would be permitted due
21 to issues of self-incrimination. The defendant has now
22 introduced extensive reports by various medical personnel.
23 I have reviewed those. Some of them I believe there is no
24 controversy about. Others of them, the government and the
25 defense are of different points of view. Frankly, some of

1 the conclusions reached by the defense medical team are
2 inconsistent with what I see as the conduct in this case.

3 But I have considered Mr. Abdul-Latif's life and
4 history. I have considered the partial fetal alcohol
5 syndrome contention, the alcohol-related neurodevelopment
6 disorder, the dependent personality disorder, the
7 post-traumatic stress disorder, all of which are urged by
8 the defense. I have treated them as relevant to the
9 history and characteristics of the defendant. So that our
10 record is complete, those include my review of Dr. Adler's
11 forensic evaluation and his supplemental forensic
12 examination; Dr. Connor's graphic charting, that was
13 interesting, and his supplemental report; Dr. Breen's
14 forensic neurological examination; and the psychological
15 examination of Dr. Salusky.

16 What ultimately I draw from this is that
17 Mr. Abdul-Latif had a difficult upbringing, that he has
18 both physical and mental issues, that he became a disciple
19 of a radical ideology, and that he meaningfully
20 participated in the conspiracy to carry out those radical
21 and violent views. Therefore, there is both factors that
22 favor Mr. Abdul-Latif and factors that do not favor him in
23 his history and characteristics.

24 The question that the court has struggled with is the
25 one of looking at the range of sentences in this matter.

1 They are all well above the circumstances that the
2 11(c)(1)(C) plea -- let me say the range of sentences that
3 the 11(c)(1)(C) contemplates. I think that the range is a
4 recognition of the history and characteristics of the
5 defendant.

6 The third consideration or group of considerations is
7 the seriousness of the offense, the need to promote
8 respect for the law, and to provide just punishment. Of
9 those, just punishment is the one that really encapsulates
10 the other two, the seriousness of the offense and the need
11 to promote respect for the law.

12 The guidelines in this matter would require me to
13 impose a life sentence, or would recommend a life
14 sentence. I have not pursued the question of a mandatory
15 minimum, but there is discussion in the pleadings that it
16 would be a 30-year mandatory minimum.

17 Instead, the plea that the court has accepted limits
18 the range to 204 to 228 months. I believe that a sentence
19 in that range reflects the seriousness of the offense,
20 which the court has previously indicated it finds to be
21 very serious, as well as the unique evidentiary situation
22 that was created by the conduct of the investigation, and
23 plays into the question of what is just punishment.

24 The fourth 3553(a) factor is deterrence to criminal
25 conduct such as this by others. Normally that is not one

1 of the higher factors in the court's consideration. In
2 this, however, Mr. Abdul-Latif made it so because of his
3 view at that time that this crime was intended to motivate
4 others. He spoke approvingly of other individuals who
5 have committed mass shootings, and hoped that his actions
6 would motivate others to emulate him. Therefore, this
7 sentence does need to deter this type of criminal conduct
8 by others.

9 In regards to the need to protect the public from
10 further crimes by Mr. Abdul-Latif, I am going to count on
11 my old friend of age and experience as our best defense
12 from future crimes. I intend to impose a period of
13 supervised release of ten years, because I am comfortable
14 that after a period of incarceration, and a period of
15 supervised release, that whatever issues pertain to
16 susceptibility to future crimes, capacity to commit future
17 crimes, will have largely passed, and that consideration
18 will have been met.

19 Finally, the sixth consideration to the court is the
20 need to provide the defendant with appropriate services.
21 That's why I am asking that the defense recommendations be
22 made clear in the judgment. Some of those involve further
23 education, an opportunity to learn vocations that would
24 make him employable. I certainly endorse those.

25 The other part of the sixth factor is the need to

1 avoid unwarranted sentence disparity. That's an argument
2 that is often made in this court. It is a difficult one.
3 The answer for consistency in sentencing in the view of
4 the United States Congress is the guidelines. They were
5 intended, as they were originally authored, to prevent
6 disparity and encourage consistency.

7 The regime that I am asked to implement is one that
8 asks me to look at each defendant individually and make a
9 determination as to how those 3553(a) factors are best
10 applied. By that very task it promotes lack of
11 consistency because sentences need to be tailored. I
12 would only note in this matter that each case is unique.
13 If we had gone to trial, and Mr. Abdul-Latif had been
14 convicted, the recommended sentence would have been life.

15 The cases that are argued to the court are strongly
16 influenced by the location of the forum. And I won't
17 highlight which two states seem to favor longer sentences
18 and those that have adopted lesser sentences.

19 But I will say that one reason why unwarranted
20 sentence disparity is somewhat a lesser factor in this,
21 besides each case being unique, is the fact that the
22 parties have recommended to the court, and the court has
23 accepted a range, which by its very nature makes those
24 other sentences to be somewhat less persuasive.

25 Finally, I would say that the court is well aware of

1 the unique circumstances of the time that Mr. Abdul-Latif
2 has been incarcerated, and the difficulty of that
3 incarceration. It is something that I have intervened in,
4 with calls to the Bureau of Prisons, both in regard to
5 Mr. Abdul-Latif's treatment and also the accommodation of
6 his wife. It is certainly a situation where it is
7 mentioned many times in the cases that I have read, the
8 terrorism cases I have read, where it is noted that the
9 very difficult circumstances that terror suspects are
10 placed in is a punishment different from mere
11 incarceration.

12 I am hopeful that, although I have no control over
13 this, that the Bureau of Prisons as it evaluates
14 Mr. Abdul-Latif is able to place him in a location where
15 he is not subject to as harsh of conditions as someone who
16 faces a community of people who would have been greatly
17 impacted had the plot gone forward and faced with the
18 potential loss of young people's lives.

19 The last argument made by the defense in this case has
20 to do with the intentional, as they described it,
21 destruction of evidence. I think that is well
22 acknowledged by the fact that they ended up with an
23 11(c)(1)(C) plea, at less than the goal they started with.
24 And, secondly, my consideration of those evidentiary
25 questions as a 3553(a) factor for the nature and

1 circumstances of the offense.

2 And, finally, as I have already noted, it is my
3 intention then to do ten years of supervised release.

4 Having done the most thorough job that I can in this
5 matter, I am left then with the question of what is the
6 appropriate sentence. I believe that the most appropriate
7 sentence in this matter is one that is not recommended by
8 any of the parties, and that is a sentence of 18 years.

9 I do that, having started with the guideline range,
10 controlled by the 11(c)(1)(C) plea in this matter, with
11 full acknowledgment of the incredible harm that would have
12 been done had this gone forward, and balanced against the
13 3553(a) factors, trying to treat Mr. Abdul-Latif as an
14 individual and not simply as a face of terrorism.

15 Therefore, as to Counts 1 and 2, the defendant shall
16 be committed to the custody of the United States Bureau of
17 Prisons for a term of 18 years. Upon release from
18 imprisonment, the defendant shall serve a ten-year term of
19 supervised release, subject to the standard conditions, as
20 well as the special conditions that are set out in the
21 sentencing recommendation, and are to be incorporated into
22 the judgment.

23 The court finds the defendant does not have the
24 ability to pay a fine, and the defendant shall pay a
25 special assessment in the amount of \$200 for Counts 1 and

1 2, which shall be due immediately.

2 As I understand it, the defendant requests
3 consideration of placement in either Oxford, Wisconsin or
4 in FCI Berkeley, which is located in Beaver, West
5 Virginia, because of their college programs. If those are
6 unavailable, he requests consideration of Manchester,
7 Kentucky, because of family connections.

8 Mr. Abdul-Latif, I think you know that I can't control
9 what the Bureau of Prisons does in terms of your
10 placement, and I don't know how they will evaluate you in
11 terms of their various categories of incarceration, but
12 that will be the materials contained in your judgment, as
13 those are your requests.

14 I will ask each counsel if they have anything further
15 to argue that they have previously not argued.

16 Mr. Greenberg.

17 MR. GREENBERG: I don't, your Honor. I have one
18 question on the recommendation to BOP at the appropriate
19 time.

20 THE COURT: This would be a good time.

21 MR. GREENBERG: The defendant, it appears to me,
22 was also asking in the first instance to be housed at a
23 Washington state correctional facility. I don't know if
24 the court intended to address that.

25 THE COURT: I am told, because of the nature of

1 the charges, that is not going to be a consideration. We
2 can include it, but it is my understanding that is not
3 going to happen.

4 MR. GREENBERG: Shall I include the language, your
5 Honor?

6 THE COURT: Sure. Ms. Wellman.

7 MS. WELLMAN: That was going to be my only
8 question. I appreciate that you are going to include it
9 in the judgment. Mr. Abdul-Latif understands it is not
10 binding, and may not be possible.

11 THE COURT: There seems to be a range of charges
12 where the government doesn't designate to state
13 facilities. I understand this is within that group. It
14 is up to the Bureau of Prisons.

15 MS. WELLMAN: I understand.

16 THE COURT: Having heard from counsel, that will
17 be the judgment of the court.

18 Mr. Abdul-Latif, as part of your plea agreement, you
19 entered into an agreement which waives your rights to
20 appeal, including the sentence itself. Such waivers are
21 generally enforceable, but if you believe that the waiver
22 is unenforceable, you can present that theory to the
23 appellate court.

24 If you wish to do so, you have a right to file
25 in forma pauperis, and the clerk of the court could

1 prepare and file a notice of appeal at your request. You
2 should be aware, with few exceptions, any notice of appeal
3 must be filed within ten days of the entry of judgment,
4 which will likely occur today. And I request that a full
5 copy of the presentence report and the judgment be
6 provided to the Bureau of Prisons, and also to the U.S.
7 Sentencing Commission.

8 MS. WELLMAN: Your Honor, I have had an
9 opportunity to review the judgment. I believe it reflects
10 your Honor's order. May I approach?

11 THE COURT: You may.

12 MS. WELLMAN: Your Honor, my wise boss just
13 reminded me, it is helpful in these kind of cases,
14 particularly given your Honor's comments, to say recommend
15 no solitary confinement. Is that something your Honor
16 would be willing to do?

17 THE COURT: Sure. I have never seen that done,
18 but I will take your word for it.

19 MS. WELLMAN: Thank you, your Honor. May I
20 approach?

21 THE COURT: You may. Mr. Greenberg, you should be
22 giving handwriting lessons to your fellow U.S. Attorneys.
23 I can actually read your name.

24 I have signed the judgment in a criminal case, dated
25 it March 25, 2013, and am returning it to the clerk for

1 filing at this time.

2 Anything further from the government?

3 MR. GREENBERG: No, your Honor.

4 MS. WELLMAN: No, your Honor. Thank you.

5 THE COURT: Mr. Levin, I understand you are not
6 with us anymore. Nice to see you again.

7 Mr. Abdul-Latif, it has been an interesting experience
8 for the court. I appreciate the fact that you have put up
9 with a lot from me. The defense will tell you that they
10 have put up with a lot from me. The government can tell
11 you they have put up with a lot from me. I hope that what
12 we have done today represents justice. We will be in
13 recess.

14 (Adjourned.)

CERTIFICATE

I, Barry L. Fanning, Official Court Reporter, do hereby
certify that the foregoing transcript is true and correct.

S/Barry L. Fanning

Barry L. Fanning